



**Date:** April 11, 2014

**To:** Thomas J. Bonfield, City Manager  
**From:** Wanda S. Page, Deputy City Manager  
**Subject:** Master Network Development Agreement between the City of Durham and AT & T

### **Executive Summary**

The Master Network Development Agreement presented for City Council's consideration is the document representing the understanding between AT&T and the City of Durham that was negotiated as part of the City's participation in the North Carolina Next Generation Network (NCNGN) Request for Proposal (RFP) process. NCNGN is a collaborative effort between Carrboro, Cary, Chapel Hill, Durham, Raleigh, Winston-Salem, and university partners Duke University, North Carolina State University, University of North Carolina at Chapel Hill, and Wake Forest Baptist Medical Center/Wake Forest University.

The agreement provides for the terms and conditions pursuant to which AT&T will provide a fiber-based network to offer ultra-fast broadband to residential and business end-users within the City of Durham and describes several initiatives designed to increase community access to broadband by providing free or reduced cost services. The collaboration among NCNGN partners allowed the City and other municipal partners to negotiate potential community benefits and other terms that, on the whole, are on par or better than those available in other publicly available precedents for similar types of recent agreements. The Master Network Development Agreement is expected to be considered by each of the six NCNGN municipalities, potentially resulting in six separate but similar agreements if approved by all NCNGN municipal members.

### **Recommendation**

To authorize the City Manager to execute a Master Network Development Agreement with AT&T that provides for the terms and conditions of AT & T's development and operation of an ultra-fast broadband fiber based network in the City of Durham.

### **Background**

Durham and five other cities (Carrboro, Cary, Chapel Hill, Raleigh, and Winston-Salem) are participating in a cooperative effort (NCNGN) to solicit deployment of ultra-high speed fiber-based communication networks in local markets. AT&T responded to the NCNGN RFP. Discussions began in May of 2013 and have resulted in the proposed Master Network Development Agreement.

AT&T was one of eight vendors that responded to the Request for Proposals (RFP) NCNGN issued through the Triangle J Council of Governments. The RFP invited one or more private

companies to build and operate next-generation networks in the six communities involved in NCNGN: Carrboro, Cary, Chapel Hill, Durham, Raleigh, and Winston-Salem. In addition to outlining the terms of AT&T's offer to provide broadband connections with speeds up to 1 gigabit per second to local residents and businesses in areas where there is sufficient demand in all six communities, the proposed agreement include several initiatives designed to increase access to broadband by providing free or reduced cost services. In exchange for this access, the NCNGN members will attempt to streamline processes around permitting and inspections, ensure equal treatment for broadband providers that offer similar services, and support community education efforts about the benefits of gigabit networks.

## **Issues and Analysis**

### **The Network**

AT&T will bear the cost necessary to design, construct, and operate a fiber-based network that provides residential and business end-users with broadband service with speeds up to 1 Gigabit per second. AT&T will deploy the Network in neighborhoods where demand is expected to compensate for the cost to build the Network. AT&T intends to provide residents an opportunity to express their interest in service to provide an early indication of where demand is greatest. Once AT&T's gigabit Network is available in a specific neighborhood it will connect customers on an ongoing, as-requested basis. AT&T agrees to provide occasional ad hoc updates upon request concerning, among other matters, demand thresholds required for residential neighborhoods, efforts to assess and increase demand, and deployment status. The specific form, content, and frequency of these updates are not defined in the agreement.

### **Community Benefits**

The community benefits described below will be shared by all NCNGN municipalities. Where possible, they will be allocated among the municipalities roughly in proportion to population.

#### **1. *Community Broadband Services***

AT&T will provide free gigabit internet service for seven years to up to 100 community sites across all six municipalities as they build the Network provided that the City or a third party pays the initial connection costs. Connection costs typically run \$300 – \$500. The City can use whatever method it chooses to select the community sites, but the sites must be agreed to by AT&T. The community sites are public or non-profit facilities that provide access and services directly to citizens (e.g. civic buildings, recreations centers, or non-profits offering digital literacy or community technology access) including public and non-profit incubators. Schools and libraries are not eligible because based on current federal E-rate regulations AT&T cannot connect schools and libraries for free. The service provided will be the same gigabit service that will be available to residential customers. It cannot be used to support emergency or mission critical services or any commercial service offerings or operations provided to third parties.

## **2. *Broadband Services to Multi-Dwelling Apartment Units***

AT&T will use commercially reasonable efforts to ensure that free internet service at 3 Megabits per second is provided to the residents in up to 10 affordable housing apartment complexes (“MDUs”) for five years. For an MDU to qualify for the service, it must have 45 – 300 apartments, the owner – if permitted by law – must agree to an exclusive marketing agreement with AT&T, and the building must meet certain other requirements.

## **3. *Small and Medium Business Program***

AT&T agrees to pre-provision, in advance of any customer orders, fiber and electronics (“Fiber”) to up to 100 business buildings throughout the NCNGN municipalities. This program is intended to benefit small and medium businesses that would otherwise need to pay connections costs. The City or a designee like the Chamber of Commerce may nominate buildings to be connected, if it chooses to do so, but AT&T retains the discretion to select sites. The City or its designee will work with AT&T to contact property owners about the program.

## **4. *Public Wi-Fi Hotspots***

The agreement outlines certain terms to guide potential future negotiations for Public Wi-Fi access, but AT&T is not required to provide public Wi-Fi hotspots, and the City is not required to use AT&T’s network and services for public Wi-Fi sites.

## **City Support and Commitments**

The City agrees to designate staff to facilitate communications between AT&T and City staff and officials. The City will provide expeditious review of permits, attempting to approve or respond within one week depending on the nature and size of the work being permitted, and accept electronic submission of documents. The City also agrees to allow AT&T access to rights-of-way, facilities, infrastructure, and city owned utility easements all in accordance with existing applicable regulations, ordinances, and terms of the easements, and subject to other conditions. In section 6.7 of the agreement, the City agrees to share map and address data with AT&T but makes no representation as to the accuracy of the data. Consistent with the policies of the public information office, the City also agrees to develop and implement an informational program about the benefits of the Network, and in section 5 of the agreement the City agrees to work with AT&T and other NCNGN members to develop digital literacy and training programs for low-income residents living in the City.

## **Non-Discriminatory Practices**

Section 6.9 of the Agreement explains that the City’s policy is to treat broadband Internet service providers, including AT&T, in a competitively neutral way depending upon the availability and similarity of the services provided. If the City extends better benefits to another broadband provider that provides services similar to those offered by the Network AT&T is providing under this agreement, the City will prospectively

extend the same benefits to AT&T subject to governing board approval if such governing board approval is required by any applicable law, regulation, or policy. This term does not alter existing contracts between the City and AT&T and it does not reduce AT&T's obligations related to community broadband services, public Wi-Fi, or services to multi-dwelling apartment units .

### **Term and Termination**

The agreement will remain in effect until AT&T has fulfilled its obligations to provide service to the community sites and MDUs within the City or nine years from the effective date, whichever occurs first, unless terminated in accordance with the agreement or renewed by the parties. For any community sites or multi-dwelling apartment units connected receiving service under the terms of this agreement, AT&T will continue to provide the service for the full seven or five years described in sections 2 and 3 of the agreement even if the contract is terminated before those periods are up. The City may terminate the agreement if AT&T fails to provide any residential end-users with broadband internet services with advertised speeds up to 1 gigabit per second or greater within two years.

### **No Exclusivity**

In general, nothing prevents the City from entering into similar agreements with any other Services provider, but in Section 2.1.3 the City agrees that if it separately agrees to terms for AT&T to provide Wi-Fi in public sites, AT&T will be the exclusive provider of public Wi-Fi at those sites.

### **Alternatives**

The Durham City Council could send the item back to staff for further review; or not approve the Master Network Development Agreement

### **Financial Impact**

No direct impact

### **SDBE Summary**

The item was not reviewed by the EO/EA department

### **Attachments**

Master Network Development Agreement